

COMMONWEALTH OF VIRGINIA

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DELEGATE DANIEL MARSHALL, III, Vice-chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordable Housing, Real Estate Law, and Mortgages Work Group May 21, 2014, 10:00 AM House Room C, General Assembly Building

I. Call to Order - Affordable Housing, Real Estate Law, and Mortgages Work Group

Delegate Danny Marshall, *Chair*, called the meeting to order at 10:00 AM.

Work Group members in attendance: Delegate Daniel Marshall, *Chair*; Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Delegate Chris Peace; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

Staff: Elizabeth Palen, *Executive Director of VHC*

The members introduced themselves and Delegate Chris Peace was introduced as a new member.

II. Uniform Statewide Building Code; accessible units (SB 63, Puller, 2014)

- **Elizabeth Palen** described the content of the bill, which called for a set-aside of dwelling units for those with issues of accessibility.
- **Senator Linda Puller** currently has other items on her agenda and doesn't wish to pursue this topic in discussion this interim.

III. Examination; initial asbestos worker license applicants (HB 179, Farrell, 2014)

- **Delegate Peter Farrell** led a discussion of the need for safe guards for employees working with asbestos as presented in HB 179.

DELEGATE DANIEL W. MARSHALL, III
DELEGATE DAVID L. BULOVA
DELEGATE ROSALYN R. DANCE
DELEGATE BARRY D. KNIGHT
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER

MARK K. FLYNN
LAURA D. LAFAYETTE
T.K. SOMANATH

- The bill has merit—deserves more attention; it tries to inform workers that they are entitled to a safe environment.
- The bill has passed the Senate several times but not the House.
- The bill deserves a chance to be looked at by the Commission. We don't want suspended contractors easily returning to business if the contractor is not doing as he is supposed to regarding asbestos removal.
- We don't want suspended contractors to come back into business without stiff penalties.
- There appears to be broad bipartisan support.
- **Tim Butera, Labor: 1151 Reston, Virginia:**
 - I represent 50% of the asbestos contractors; industry generally supports this so there is a level playing field among contractors.
 - The background is that this is a bill dealing with abatement of hazardous materials. It is a death sentence for a worker or someone walking by a site or a first responder if they are unaware of asbestos. They need protection as does the environment and persons working to abate the asbestos.
 - Industry has established a pattern where short cuts are taken; we need the eyes and ears of the people affected by the regulatory action to be able to report infractions. Also need to have the Board for Asbestos, Lead, and Home Inspectors empowered to stop toxins that are released into the atmosphere.
 - There is a need to give tools to those on the ground if violations of standards take place.
 - This bill's content empowers the Board to immediately cease work on a particular project to make the job environmentally safe.
 - Cannot shortcut this process to save dollars.
- **Delegate Marshall:** Do we know of documented cases or are we trying to prevent this from occurring?
- **Tim Butera:** Many violations have taken place that cause a real danger. I will submit information to the Commission.
- **Delegate Marshall:** Are you referring to residential and commercial?
- **Tim Butera:** Commercial, not residential; the buildings are primarily vintage 1910 to 1975 public buildings—mostly government buildings and schools. Asbestos is safe when encapsulated but not otherwise. This is a hazard that leads to death and injury. We need licensure of individual workers and industry.
- **Renee Pulliam:** I am concerned that the burden is on the company. Shouldn't there be a distinction for workers themselves having followed safety protocols? Does this place too much burden on the company, not individual workers? How does the Board know protocols are violated?
- **Delegate Farrell:** The bill is beneficial to a good contractor as well as the worker; I am open to learning all the answers to this issue as the VHC studies the issue.

- Agency (DPOR) can spot check if there is a complaint. Individual licensees are regulated by DPOR.
- **Renee Pulliam:** I am concerned that the company may lose their license.
- **Trisha Henshaw**, *Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors*: I have been monitoring this issue. Also, OSHA is involved in inspections. In order to fine or suspend a contractor, a complaint needs to be filed with the Board. The Department of Labor and Industry also plays a role.
- **Delegate Marshall:** What type of education is needed?
- **Trisha Henshaw:** Workers, inspectors, and contractors need a contractor's license and asbestos training, which is all laid out by the Code of Federal Regulations, and then there is approval by the Board.
- **Delegate Marshall:** What about renewal training? What are limits of liability; is this part of regulations?
- **Trisha Henshaw:** That is not under the Board's purview.
- **Delegate Marshall:** How many complaints have been filed statewide?
- **Trisha Henshaw:** Usually the complaints are filed through the EPA. Only one through Asbestos and Lead Board—and that would only be for a licensure issue. This is a contractor issue.
- **Delegate Chris Peace:** I have an old house and the regulations for asbestos are extensive—not unlike on-site soil training; asbestos people are already very regulated.
 - A lot of postings to be placed in a workplace--simple posting may be better. Already a lot of burden on businesses—maybe we should just say “post this information.”
- **Delegate Farrell:** I think the bill warrants more discussion.
- **Senator George Barker:** You said DPOR had one action. Have there been other settlements?
- **Trisha Henshaw:** We don't enforce compliance with contractors; just provide Board licensure.
- **Senator Barker:** So there have been other actions without Board action that have been sent to EPA?
- **Trisha Henshaw:** Yes.
 - Code of Federal Regulations sets out what the contractors have to do; the regulations have been around since 1988 or early 1990s.
 - Intent is for asbestos contractors and OSHA to addresses the issue; bill needs to be tweaked.
- **Chip Dicks:** Worker safety issue addressed through management and labor agreement, so addressed in large companies. We are talking about companies hiring general laborers; intent of bill is to provide for the general laborers.

- What is the impact of the failure of the asbestos contractor not giving notice to employees—does it impact workers' compensation because they have failed to comply? Employees cannot sue the employer, cannot go beyond workers' compensation. Maybe these issues need to be addressed.
- **T.K. Somanath:** Extent and scope of the work is determined by the environmental engineers and the contractor submits paperwork. There are a lot of fly-by-night contractors. Several postings on site; agree poster may be useful—in English and in Spanish. We don't want to make process too onerous.
- **Bob Bradshaw:** Individual notice to individuals may not be necessary if we are discussing licensed contractors in Code §§ 54.1-516.1 and 54.1-516.2 in the bill.
- **Trisha Henshaw:** Board of Contractors allows that a contractor cannot have his license revoked or suspended and then form a new entity. The Board of Asbestos and Lead does not have a problem with this provision. It is in the proposed bill.
- **Delegate Farrell:** Should this be the crux of the bill?
- **Senator Barker:** When individuals testified in House General Laws Subcommittee 3, they felt their health was being jeopardized and didn't know how to report it.
- **Mark Flynn:** Should this be done through the regulatory process? Assuming lines 14-22 of the bill, can Board do this under existing law?
- **Trisha Henshaw:** Probably not because that would be more stringent than federal law.
- **Delegate Marshall:** Please have a sub-workgroup meet and return with outcomes;
Delegate Peace, please serve as the chair of this sub-workgroup.

IV. **Virginia Residential Landlord and Tenant Act; expedited evictions for nonremediable breaches; continued disturbances of the peace (SB 354, Edwards, 2014)**

- This bill was brought to the Commission from Senator Edwards because there is a need in Roanoke to evict tenants that are causing havoc to the revitalization of downtown and hurting other commercial enterprises.
- **Wendy Jones, Williamson Road Property Owners' Association:**
 - I am looking at this issue from the commercial landlord side, not residential property, and need clarification about the parameters of self-help.
 - Commercial property that is located in downtown Roanoke was a restaurant and is now a night club and has been the subject of 77 police calls in the last six months for assorted complaints.
 - The restaurant is a health and safety issue for residential neighbors; want clarification concerning how to deal with this issue under commercial law.
 - Would like to come back in the fall and discuss this issue further.
- **Chip Dicks:** Original bill drafted to the wrong section of the Code of Virginia, in the Virginia Landlord Tenant Act. There is a new trigger to have it become effective if the landlord owns three properties.

- Unlawful detainer for residential, common law for commercial, can use self-help for removing the tenant.
- Problem is the police department doesn't think self-help is allowed.
- Grimes Creasy, an expert in this area and Roanoke lawyer, will hold a session with landlords and police and inform the landlords that there is no need to go to court to evict when dealing with commercial property.
- Need to clarify what the parameters are for self-help and removal of the tenant.
- When landlord changes lock or court evicts, if tenant breaks back in, that is a criminal offense.
- Would like to bring back this issue in the fall.
- **Shaun Pharr:** I think the bill needs clarification and will work with Chip and others this summer and will work with Chip to generate a draft and send it to Elizabeth.

V. Virginia Residential Landlord and Tenant Act; retaliation by landlord; rebuttable presumption. (HB 820 Delegate Alfonso Lopez)

- This issue is regarding the retaliatory eviction of a tenant. **Delegate Alfonso Lopez** asked Christie Marra to speak on his behalf.
- **Christie Marra**, *Poverty Law Center*, began with a Power Point presentation looking to what other states are doing (see attachment).
 - Overall purpose is not to create a new right but give more power to enforce the rights the tenant already has been given. These are actual examples from the field; evidentiary standard is a problem with week-to-week or month-to-month leases.
 - Case one: Landlord turned off heat in the middle of the winter, then landlord sued to evict, but tenant couldn't prove it was retaliatory. Case two is the same but with water shut off.
 - For example; if a tenant filed a tenant's assertion or motion in general district court because the heat or water was unlawfully turned off the tenant can rarely prove this is done in retaliatory fashion.
 - Never or rarely can put on evidence because the tenant needs the intent to be proved.
 - Uniform act has rebuttable presumption that the act was retaliatory.
 - Nonpayment of rent means it never comes into play.
 - A landlord may not terminate a periodic tenancy because tenant exercised the right to sue the landlord by taking him to court.
 - Within one year, according to the bill, there is a presumption it was done in retaliation, which means the tenant can put on evidence. If Virginia were to adopt the Uniform Law, the landlord could then show a legitimate reason for termination of the lease.
 - Sixteen states have adopted the Uniform Law and 19 states have not adopted the Uniform Law.

- Burden is always on tenant regardless of proximity of time; virtually impossible to know how often this issue comes up.
- If tenant caused Building Code violation, there is never a presumption that the landlord acted improperly by evicting the tenant.
- **Chip Dicks:** Where does it say that in this bill?
- **Christie Marra:** Subsection C.
- **Chip Dicks:** If the tenant asserts a tenants' assertion, then they have burden of proof under the Rules of Evidence, defense of eviction.
- **Christie Marra:** Now they have to prove that the landlord intended the action, the bill says if the tenant took protected action, the burden of proof would shift.
- **Chip Dicks:** Aren't there other remedies if water is turned off?
- **Christie Marra:** Yes.
 - After a tenant exerted his remedy, then a landlord gave a termination notice. Proving intent is extremely difficult. The bill creates a rebuttable presumption.
 - VRLTA is exempted.
- **Chip Dicks:** Would you agree that Delegate Manoli Loupassi's legislation from the 2014 Session, the amendments to the Virginia Residential Landlord Tenant Act (VRLTA), creates a situation where exempted property is taken care of?
- **Christie Marra:** I do not agree. Month-to-month tendency is still covered by VRLTA.
 - One of the safeharbor provisions for the landlord and one of the four reasons a rebuttable presumption does not arise is if the tenant is behind on rent. The trier of fact must find for the tenant if a tenant proves that tenant filed prior to getting a determination notice.
 - Is there a lessor standard? There was discussion during session that it was a prima facie case if the acts were sufficient as a matter of law to create an inference and it was up to the landlord to then show there was another reason.
- **Chip Dicks:** Is the problem that the judge is not even hearing evidence on retaliatory conduct?
- **Christie Marra:** Never makes it to court. Their clients were working in unhealthy conditions and didn't say anything because they might be put out in either five or 30 days.
- **Renee Pulliam:** Why should we change legislation if not even going to court? Why not use education instead?
- **Christie Marra:** Essentially, the presumption makes it worthless to go to court.
 - Six months chosen as reasonable amount of time to retaliate.
- **Delegate Lopez:** Means a lot to my district because of the many languages spoken and interesting power dynamics. The bill is trying to make it easier to deal with an impossible situation for tenants to prove intent of the landlords.

- **Senator Barker:** Following up on six-month period, have you talked with anyone in other states? Does six months make a difference?
- **Christie Marra:** I will follow up and get that information from other states.
 - If a legal aid lawyer comes in and is asked to take the case under current law, the answer is no because there no way to prove that the landlord is taking action due to tenant asserting his/her rights.
- **Delegate Lopez:** Look forward to working with working group on this issue and will work for a solution regarding periodic tendency cases.
- **Renee Pulliam:** The bill doesn't indicate it is month-to-month or week-to-week lease or longer lease term.
- **Senator Barker:** More important where the tenant is within the length of the lease; how close it is to the renewal date.
- **Shaun Pharr:** I have opposition; this bill is not drawn narrowly enough and has a completely undefined subset. I also prefer the term "housing provider" not "landlord" be used during this discussion. The entire premises of VRLTA is turned around, so now the presumption is housing provider is acting in bad faith. The housing provider is at risk by having to rebut presumption of acting badly. There is a fundamental problem with the law itself. There is an undefined and tiny universe this bill addresses and this approach is overbroad.
- **Chip Dicks:** The guts of the bill is to switch the burden of proof. If the burden was switched, there still is a problem with the word if problem with word intent, but may not have problem with tenant showing landlord was retaliatory.
- **Kelly Harris-Braxton:** To respond to constant cases brought against landlords; I don't see it happening if the advocacy association won't bring a case and use their resources if they know it is impossible to win.
- **Mark Flynn:** What about striking the intent language?
- **Christie Marra:** It's all about timing.
- **Delegate Lopez:** Would like to get together in a smaller group and return with revised language on renewal of rental agreements.

VI. Use of a software product that is used to set rental rates without using the actual market rate values.

- **Delegate Rob Krupicka's constituent Maurice Barboza** spoke to the issue:
 - Resident of Hunting Point Apartments, affordable housing built in 1950s in Alexandria.
 - The management company has a product they use called LRO Rainmaker software and it creates a rise in rent not tied to improvements or length of time a person has rented the property.
 - Existing rent shouldn't be linked to software.
 - Retaliatory intentions for steep raise in rent.

- 32.8% rent increase, asked for reconsideration and in keeping with actual market, not able to renegotiate or adjust despite drop of comparable units. LRO pricing, like airlines, is based on a variety of features.
- What is the genuine market rate and how to recalculate—not on renewal letter day—primary driver. How much will the market bear? Is this a practice that is unfair to existing renters?
- **Delegate Marshall:** Was this a bill in 2014? Normally work on legislation instead of developing; we would have preferred draft legislation.
 - There are many issues to determining if it is proper to raise the rental rate based on calculating the month when the market is at its highest and if this is a proper action.
- **Delegate Marshall** asked constituent to create draft legislation and forward it to Elizabeth Palen; if that is done, we will take up a discussion of the draft at the next Affordable Housing, Real Estate Law, and Mortgages Work Group meeting.

VII. Public Comment

- **Delegate Marshall** asked for any public comment.
- **Elizabeth Palen:** Please note that we now have a twitter feed with pertinent housing articles as part of the Virginia Housing Commission website. There is no need if you haven't already done so to join Twitter; you may just read articles and enjoy being updated on housing issues.

VIII. Adjourn

- Upon hearing no comments, **Delegate Marshall** adjourned the meeting at 12:15 P.M.